

5 Official Opinion of the Compliance Board 93 (2007)

**“MEETING” – GATHERING AMONG MEMBERS-ELECT
OF A PUBLIC BODY, HELD NOT TO BE A MEETING –
CELEBRATORY DINNER FOLLOWING SWEARING-IN
CEREMONY, HELD NOT TO BE A MEETING –
GATHERING AT PRIVATE HOME WITH QUORUM NOT
PRESENT, HELD NOT TO BE A MEETING**

January 3, 2007

Mr. Richard A. Romer

The Open Meetings Compliance Board has considered your three complaints, written within a 12-day period, alleging that the North Beach Town Council held a series of closed meetings, without notice to the public, in violation of the Open Meetings Act.

On behalf of the Council, John F. Shay, Jr., Esquire, submitted a single response addressing all three complaints and denying any violation of the Act.¹ In this opinion, we shall summarize each complaint (in chronological order based on the date of the alleged violation) and the portion of the Council’s response applicable to it. For the reasons explained below, we conclude that no violation occurred.

¹ In responding on behalf of the Council, Mr. Shay indicated that the Council viewed the complaints as frivolous and lamented that the complainant had made no attempt to speak to Council members or staff to ascertain what actually occurred.

Any person has the right to file a complaint with the Compliance Board based on the person’s belief that a public body may have violated the Open Meetings Act. § 10-502.5. A complainant bears no particular burden of proof. 1 *OMCB Opinions* 178, 181 (1996). After all, the public body, not the complainant, usually has the information needed to permit a full evaluation of whether a violation of the Act occurred. However, “[t]he right to file a complaint should be exercised ... only in the good-faith belief that the Act was indeed violated, based on a reasonable inquiry into the available facts.” 3 *OMCB Opinions* 143, 144 (2001).

I

November 15, 2006

A. Complaint

The complaint dated November 25, 2006, alleged that five members of the Council met in a closed session on November 15 with the outgoing Mayor in the private residence of Council member Jane Hagen. In addition to Mayor Mark R. Frazier and Council member Hagen, present were outgoing Council Vice-president Denise Lucero and Council members Gregg Dotson, Andrew “Bud” Hunt, and Gwen Schiada. The complaint alleged that no public notice of this session was given. The topics considered, according to the complaint, were: (1) selection of the Council vice-president; (2) assignment of responsibility for the redesign of the Boys and Girls Club; (3) demolition of the existing Town Hall and sale of the property; and (4) “fast tracking a controversial development project known as the North Beach Resort.”

B. Response

The response noted that, at the time of the November 15 gathering, only two members of the Council then in office (Mr. Hunt and Ms. Lucero), along with the then-incumbent Mayor, were present. Mr. Dotson, Ms. Hagen, and Ms. Schiada had not yet been sworn in. The Council includes six members. Because a quorum of the Council was not present, the response suggested that no violation of the Open Meetings Act could have occurred.

C. Discussion

We shall simply assume, for the sake of our analysis, that the matters of public business identified in the complaint were discussed.² Such a discussion would violate the Open Meetings Act, however, only if the Act applied to this gathering. The Act applied if a meeting occurred, which is to say that a quorum was convened. § 10-502(g).³ The Council of the Town of North Beach consists of six members, and four constitutes a quorum. Charter of the Town of North Beach, §§ 19-301 and 19-307, 5 *Municipal Charters of Maryland* ch. 106.

Based on the Council’s response, we find that a quorum was not present. A quorum can exist only among “the members of a public body.” § 10-502(k)(1). Members-elect cannot be counted in determining the existence of a quorum. In this

² We have long recognized that even preliminary discussions on matters of public business might fall within the Act’s purview. *See, e.g., 3 OMCB Opinions* 78, 81 (2001).

³ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

case, until the members-elect qualified for their positions on the Council by taking the oath of office, they were not members of the public body. Thus, no violation of the Open Meetings Act occurred.⁴

II

November 17, 2006

A. Complaint

The complaint dated November 20, 2006, alleged that four members of the Council, constituting a quorum, met for dinner at the Westlawn Inn on November 17, during which town business was considered. According to the complaint, no notice to the public was provided, and the meeting was closed. The Council members present were Mr. Dotson, Ms. Hagen, Mr. Hunt, and Ms. Schiada. According to this complaint, the topics discussed were identical to those alleged in the complaint discussed in Part I above.

B. Response

The Council's response noted the recent election in which a new Mayor and four new members of the Council were elected. The newly elected officials were sworn in on November 17 at the Town Hall, described as "a festive occasion with family and friends in attendance." Afterwards, a group of around 15 or 20 people, including the four new Council members, their spouses, town staff members, and friends went to the Westlawn Inn to celebrate with cocktails and dinner. Mr. Shay indicated that he spoke with the four Council members as well as staff in attendance and, according to those present, no semblance of a meeting occurred. According to the response, "[i]f any town council issues were discussed at all, it was in a very general manner and [did] not come close to violating the Open Meetings Act. In fact not one of the town council members could even remember a true town issue coming up."

⁴ Even had a quorum of the Council been present, not every matter of public business would necessarily trigger the Open Meetings Act. Using an example alleged in the complaint, the members of a municipal governing body can meet to discuss the selection of their presiding officers under their municipal charter without triggering the Open Meetings Act, because the action would involve an "administrative function" to which the Open Meetings Act generally does not apply. § 10-503(a)(1)(I); *see, e.g.*, 1 *OMCB Opinions* 252 (1997) (municipal council engaged in appointing a person to fill a council vacancy involved an executive function (now known as an administrative function) outside the scope of the Act).

C. Discussion

Subject to limited exceptions, the Open Meetings Act applies when a quorum of a public body “meet[s]” for the “consideration or transaction of public business.” § 10-502(g). Conversely, the Act does not apply to a “social gathering ... that is not intended to circumvent [the Act].” § 10-503(a)(2). *See, e.g., 4 OMCB Opinions* 58, 62 (2004) (private dinner was a social gathering not subject to the Act, provided public business was not discussed). Thus, nothing in the Act precludes the members of a public body from socializing among themselves or with others as long as public business is not considered. *3 OMCB Opinions* 224, 226 (2002). Furthermore, we have long recognized that members of a public body attending a social occasion “often make stray comments relating to public business; after all, the common link among the group is membership on a particular public body.” *2 OMCB Opinions* 5, 7 (1998). Such stray comments, detached from an actual discussion of public business, do not result in a violation.

Based on the Council’s response, there is no reason for us to believe that the gathering on November 17 at the Westlawn Inn was anything other than a celebratory social occasion. Thus, we find that no violation occurred.

III

November 28, 2006

A. Complaint

The complaint dated December 1, 2006, alleged that four members of the Council met in a closed session on November 28 in the private residence of Council member Schiada. In addition to Council member Schiada, present were Council members Dotson, Hagen, and Hunt. The complaint alleged that no public notice of this session was given. The first three topics of discussion identified in the complaint were identical to the first three topics identified above. The fourth topic allegedly discussed involved the use of public funds to restore a wetland located on the northern edge of North Beach, adjacent to the residences of two Council members residences.

B. Response

Mr. Shay interviewed the four Council members alleged to have attended this session, and each of them confirmed that Council member Dotson was not present. Because the number of Council members attending fell short of a quorum, the Council’s position was that no violation occurred.

C. Discussion

As discussed in Part I C above, the Open Meetings Act generally applies when a quorum of a public body meets for the consideration or transaction of public

business. § 10-502(g). Absent a quorum, the Open Meetings Act does not apply. 1 *OMCB Opinions* 101, 103 (1994).

As the Council's response indicated, only three members were present; the quorum requirement of four was not met. Hence, no violation of the Open Meetings Act occurred.

IV

Conclusion

We find that the North Beach Town Council did not violate the Open Meetings Act on the three occasions identified in your complaints, because the Open Meetings Act applied to none of them.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney J. McKeldin
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